



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

December 14, 2015

USFWS

Attn: Barbara Beggs
650 Capitol Mall, Suite 8-300
Sacramento, California 95814

Subject: Draft Environmental Impact Statement for the Delta Research Station – Estuarine
Research Station and Fish Technology Center Project, Sacramento, California (CEQ#
20150301)

Dear Ms. Beggs:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA understands that the research facility that is proposed for construction would be shared by state and federal resource agencies and would consist of two components: an estuarine research station that would serve to consolidate ongoing research and monitoring activities currently conducted at different facilities throughout the Bay-Delta, and a fish technology center that would be used to propagate technologies in support of population restoration of rare fish species native to the Bay-Delta. EPA is pleased that both components are proposed to be built to the standards of the U.S. Green Building Council's Leadership in Energy & Environmental Design (LEED) program at silver level or higher accreditation.

Based on our review, we have rated the Proposed Project as *Lack of Objections (LO)* (See attached "Summary of EPA Rating Definitions"). While we do not object to the Proposed Project, we wish to bring to your attention a correction needed to the General Conformity analysis that was provided in the Draft EIS. The remainder of this letter provides recommendations regarding this and other matters relevant to the mitigation and disclosure of impacts in the Final EIS. We are available to further discuss our enclosed detailed comments.

General Conformity

In its evaluation of Alternatives 3 and 4, the Draft EIS incorrectly assesses the applicability of EPA's General Conformity Rule, which established a two-step process for general conformity. The first is an applicability analysis and the second is a general conformity determination. If a federal action's emissions do not exceed the general conformity de minimis thresholds (e.g. 10

tons per year of NOx as stated in Table 6-7 of the Draft EIS), the action does not need a general conformity determination.

The general conformity applicability analysis is specified at 40 CFR 93.153(b). It requires federal agencies to estimate the total of direct and indirect emissions for a federal action (see definitions at 40 CFR 93.152). In performing an applicability analysis, federal agencies may not deduct emission credits or offsets. If emissions from an alternative exceed the de minimis threshold, the Draft EIS should commit to the preparation of a general conformity determination, in compliance with Subpart B of 40 CFR Part 93. In a general conformity determination (the second step in the process), EPA does allow the use of offsets as one of several methods of demonstrating a federal action conforms to a State Implementation Plan (see 40 CFR 93.158(a)(2)). In the Draft EIS, offsets from the voluntary emission agreement proposed in Mitigation Measure AQ/GHG-2d were applied to the general conformity applicability analysis for Alternatives 3 and 4. EPA recommends that the conformity analysis for those alternatives be corrected, removing the offsets, and that the corrected analysis be included in the Final EIS.

While the projected emissions for the proposed project (Alternative 2) do not exceed the de minimis threshold, they do closely approach it (9.6 tons compared to 10 tons as noted in Table 6-7). The Draft EIS discusses tracking of emissions, noting that an annual emissions report will be prepared for the San Joaquin Valley Air Pollution Control District (see Mitigation Measure AQ/GHG-2b). If Alternative 2 is selected and any subsequent (e.g. during construction) changes to the alternative result in increased emissions, USFWS will be required to complete a general conformity determination before emissions exceed any de minimis threshold (see Question 34 of General Conformity Guidance for Airports, Questions and Answers, September 25, 2002, FAA and EPA http://www3.epa.gov/ttn/oarpg/conform/airport_qa.pdf). For this reason, we recommend that USFWS consider heightened tracking of NOx emissions for Alternative 2, particularly as the end of the calendar year approaches, to ensure compliance with EPA's General Conformity Rule.

Water Quality

The Draft EIS indicates that "small quantities" of surface water would be needed for processes involving temperature adjustment or for acclimation of fish prior to release into the river; however, no quantitative estimate of the amount of surface water to be diverted for use in the Fish Technology Center is provided. According to the Draft EIS, because the quantity and timing of surface water diversion from the Sacramento River is not known at this time, this aspect has not been evaluated (p. 3-32). Although the quantity of water needed may be small, such information is relevant to the determination of the proposed project's impacts to waters. EPA recommends that USFWS provide, in the Final EIS, a reasonable quantitative estimate of the amounts of surface water anticipated to be used in these processes, possibly based on current hatchery operations of similar size, or other appropriate methods.

Flood Protection (Executive Order 13690)

On January 30, 2015 President Obama issued Executive Order 13690 – Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, which amends Executive Order 11988 – Floodplain Management. Section 2(i)

of E.O. 13690 establishes a new definition of the term “floodplain”. EPA recommends that the Final EIS explain how each alternative would be consistent with the directives in Executive Order 13690, and discuss any changes to the project necessary to meet those directives. For more information, go to: <https://www.fema.gov/federal-flood-risk-management-standard-ffrms>.

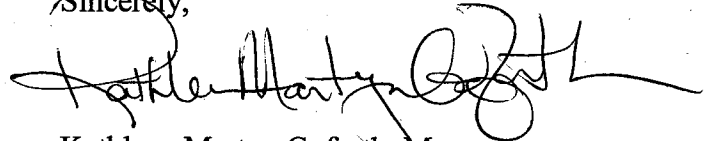
Climate Change

We believe the Council on Environmental Quality’s December 2014 *revised draft guidance for Federal agencies’ consideration of GHG emissions and climate change impacts in NEPA* (www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf) outlines a reasonable approach to analyzing climate change issues, and we recommend that the USFWS use that draft guidance to help outline the framework for its analysis of these issues. Accordingly, if applicable, we recommend the Final EIS include an estimate of the GHG emissions associated with the project, qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions. In addition, we recommend that the NEPA analysis address the appropriateness of considering changes to the design of the proposal to incorporate resilience to foreseeable climate change. The Final EIS should make clear whether commitments have been made to ensure implementation of design or other measures to adapt to climate change impacts.

More specifically, we suggest that the “Affected Environment” section of the Final EIS include a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the project, based on U.S. Global Change Research Program (www.globalchange.gov/) assessments, to assist with identification of potential project impacts that may be exacerbated by climate change and to inform consideration of measures to adapt to climate change impacts. Among other things, this will assist in identifying resilience-related changes to the proposal that should be considered.

EPA appreciates the opportunity to review this Draft EIS. When the Final EIS is released for public review, please send one hard copy and one electronic copy to the address above (specify Mail Code ENF-4-2) at the same time it is officially filed with our Washington, D.C. Office. If you have any questions, please contact me at 415-972-3521, or contact Phillip Lopez, the lead reviewer for this project, at 415-972-3210 or lopez.phillip@epa.gov.

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions
EPA’s Detailed Comments

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment